IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.152 OF 2006

Vijay Walekar & 2 Ors. ...Applicants.

V/s

The State of Maharashtra ...Respondent.

Mr. Rajendra Shirodkar for the applicants.

Ms. S.D. Shinde, APP for the respondent.

CORAM: V.M. KANADE, J.

DATE: 7th February 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicants and the learned APP for the State.

2. The applicants are arrested by the Police Officers of J.J. Marg Police Station in connection with the offence which was registered by them vide C.R. No. 140 of 2005 dated 17/5/2005 for the offences punishable under sections 144, 147, 148, 149, 323, 427, 452 506(II) and 387 of the Indian Penal Code. Initially, the offence was registered against the accused Deepak Walekar. In the complaint/FIR which was lodged by the complainant, names of these three persons were not mentioned. No overact was attributed to these applicants in the initial complaint. None of

the witnesses, in the their statements which were recorded, had mentioned the names of the present three applicants as the persons involved in the said incident which had taken place on 17.5.2005. However, after a lapse of one and half month, supplementary statement was given by the complainant in which it was stated that the present three applicants were also present at the time of the offence and certain overacts were also attributed to these applicants. These applicants were arrested on 26.06.2005 and on that day another case was registered vide C.R. No.180 of 2005. On the same day, the application was made for getting an approval from the Competent Authority as laid down under section 23 of the MCOC Act and sanction to investigate was granted on the same day and the provisions of the said Act were made applicable.

3. It is the case of prosecution that at the behest of the present applicants the said accused Deepak Walkear and his associates threatened the complainant for having attempted to sell her shop in which the present applicants were interested.

4. The learned Counsel appearing on behalf of the applicants has invited my attention to the statements

which are made by the complainant at the time of lodging of the complaint as also the statements of other witnesses and has pointed out that in all these statements the names of the present applicants have not been mentioned and only in supplementary statement of the complainant which was recorded after one and half months, their names have been taken and they have been falsely implicated. He submitted that even if the statements of the the complainant and others are taken at their face value, no prima facie case could be said to have been made out for booking them or adding charges under the MCOC Act. He submitted that prior to this case being filed, the applicants have never come to the adverse notice of the police. He submitted that the applicants are businessmen and merely because they are related to Deepak Walkear against whom number of cases have been filed, they have been falsely roped in the said complaint. He submitted that, therefore, a case was made out and the stringent conditions which are imposed under section 24 of the MCOC Act would not be made applicable to the present applicants.

5. The learned APP appearing on behalf of the State has filed an affidavit of Shri N.A.K. Shaikh, Assistant Commissioner of Police in which it is

alleged that the applicants were instigating rioters to take revenge against the complainant and no person was coming forward to file complaint against the applicants and others. However, Smt. Suman Patil gathered courage to lodge a complaint on the next day which was recorded vide C.R. No. 10 of 2005. It is further stated that in respect of the incident which happened in the year 1997, threats were given by the applicants with the help of gangsters and they had forcibly taken possession of the said room. This complaint was received and recorded on 20/6/2005 vide C.R. No. 180 of 2005 under sections 386, 506(2) read with section 34 of the Indian Penal Code against the applicants and they were arrested on 26/6/2005. The list of cases which are pending against the present applicants and the other accused has been given at Exhibit-A which is annexed to the affidavit-in-reply. On perusal of the said statement, it can be seen that so far as the present applicants are concerned, the first case was registered against them on 27/5/2005 vide C.R. No.140 of 2005 and, prior to that, no compliant has been filed or is pending against them. The second complaint was registered against them subsequently on 26/6/2005 at J.J. Marg Police Station vide C.R. No. 180 of 2005. Thus, the subsequent complaint cannot be of any assistance to the

prosecution for the purpose of applying the provisions the MCOC Act. In order to establish that the applicants are involved in continuous unlawful activity on behalf of the Organized Crime Syndicate, it has to be shown that they were involved in commission of offences prior to approval being granted under section 23. However, the 1st Chart indicates that no offence is pending against them. There is nothing on record to indicate that the witnesses have given in-camera statements against the present applicants. On the other hand, as many as 17 complaints have been lodged against the gang leader Deepak Walekar who is booked under the provisions of MCOC Act. In view of this material, it is difficult to accept the submissions made by the learned APP appearing on behalf of the State. Prima facie case, therefore, in my view, is made out by the applicants that there is no material to implicate them under the provisions of MCOC Act.

6. The applicants, therefore, are entitled to be released on bail. The applicants are already in jail for a period of almost 8 months. The charge-sheet has been filed. However, the applicants may be released on bail on certain stringent conditions to be imposed by this Court since the learned APP has expressed

apprehension that the applicants may pressurise the witnesses.

7. Under these circumstances, the applicants be released on bail in the sum of Rs 15,000/- each with one or two sureties in the like amount each. The applicants not to enter the jurisdiction of J.J. Marg Police Station for a period of six months as the trial is likely to be over by that time. If the trial is not over within a period of six months, in that event, the applicants may report after six months to the J.J. Marg Police Station once in a week till the disposal of the matter. If any complaint is received after the applicants enter the jurisdiction of the J.J. Marg Police Station after six months, against them, the APP is at liberty to apply for cancellation of the bail. The applicants to give their fresh address to the Jail Superintendent and report to the nearest Police Station from their new address once in a week.

8. Application is accordingly disposed of.

V.M. KANADE, J.